INDEX TO APPENDIX

Appendix A.....	Decision Below, dated July 27, 1982
Appendix B.....	Ordering denying rehearing dated September 27, 1982.
Appendix C.....	Order below staying mandate pending disposition of certiorari petition.
Appendix D.....	Reproduction of constitutional provisions and appropriate statutory reference.

Appendix A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Argued April 8, 1982

July 27, 1982

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. ROBERT A. GRANT, *Senior District Judge*[1]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2006
81-2007

vs.

LARRY TABELING and
SAMUEL F. JONES,
Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker,
Judge.

ORDER

This is an appeal by Larry Tabeling and Samuel F. Jones from their convictions on separate counts of conspiring to distribute marijuana and conspiring to distribute cocaine, in violation of 21 U. S. C. § 846. No statement of facts is necessary, as this is not a published or citable opinion and the facts are of course well known to the defendants and their counsel. As in all appeals in conspiracy cases, there is an objection to the trial judge's refusal to sever the defendants'

[1] Honorable Robert A. Grant, Senior District Judge of the Northern District of Indiana, sitting by designation.

trials, but it is frivolous, as are their objection to the refusal of the judge to give a multiple-conspiracy objection and their argument that there was insufficient evidence that what the defendants was selling really was marijuana and cocaine.

Only three issues need be discussed:

1. Tabeling claims that he was unlawfully searched and seized at the Denver airport. This contention is refuted by this court's opinion in *United States v. Black*, No. 81-1883 (7th Cir. Apr. 6, 1982), ____ F.2d ____.

2. Jones complains that there was insufficient evidence that he participated in the conspiracy to sell marijuana. The evidence showed that he and Tabeling were partners in a store called *The Plant Connection* from which marijuana was sold. It is of course possible that Jones was involved only in the legitimate side of the business, but it is highly unlikely given that bales of marijuana were stored at the shop; and there was other evidence, besides the probabilities inherent in the situation, linking Jones to the marijuana conspiracy (there was abundant evidence linking him to the cocaine conspiracy)—enough to satisfy the government's burden of proving guilt beyond a reasonable doubt.

3. The defendants complain that one Angela Blair was compelled to testify against them in violation of her right under the Fifth Amendment not to be compelled to incriminate herself. But no right of theirs was violated; only Miss Blair can complain of being forced to testify against herself.

The judgments of conviction are affirmed.

Appendix B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

September 27, 1982

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD A. POSNER, Circuit Judge
Hon. ROBERT A. GRANT, Senior Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2006, 81-2007 *vs.*

LARRY TABELING and SAMUEL F. JONES,
Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker, *Judge.*

ORDER

On August 9, 1982, Larry Tabeling and Samuel F. Jones filed separate petitions for rehearing with suggestion for rehearing *en banc*. All of the judges of the original panel have voted to deny the petitions, and none of the active members of the court has requested a vote on the petitions. The petitions are DENIED.

---

* Of the Northern District of Indiana.

Appendix C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60504

October 14, 1982

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 81-2006 *vs.*

LARRY TABELING,
Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 80-Cr-20041

Harold A. Baker, *Judge.*

The "MOTION PURSUANT TO CIRCUIT RULE 17(a)(b) WITH SUPPORTING AFFIDAVIT OF COUNSEL, TO STAY THE MANDATE IN THIS CASE PENDING CERTIORARI IN THE UNITED STATES SUPREME COURT" filed on October 1, 1982, by counsel for the appellant, Larry Tabeling, is GRANTED to the extent that the mandate of this Court is hereby STAYED to and including November 12, 1982.

Appendix D

§ 841. Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(As amended Oct. 31, 1951, c. 655, § 17b, 65 Stat. 717.)

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265.)

AMENDMENT [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Ratified December 15, 1791.)

AMENDMENT [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Ratified December 15, 1791.)